And, whereas the Government of Karnataka consider it desirable to refer the dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Karnataka hereby refer the said dispute for adjudication to the Additional Labour Court at Bangalore.

Points of Dispute

I. "Is the management justified in terminating the services of Shri Dhanabahaddur, Head Watchman and Sri Ganesha, Watchman, w.e.f., 16th August 1978 ?

II. If not, to what relief the above said workmen are entitled?".

By Order and in the name of the Governor of Karnataka,

J. PILLAPPA,
Desk Officer,
Labour 'A' Section,
Social Welfare & Labour Department.

1224—S. O. 1531

Order No. SWL 303 LLD 79

Bangalore, dated 29th May/1st June 1979.

Whereas the Government of Karnataka are of opinion that an Industrial Dispute exists between the workman and the management of M/s. Karnataka Implements and Machineries Co., Limited. Hassan on the points noted below:

And whereas the Government of Karnataka consider it desirable to refer the dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Karnataka hereby refer the said dispute for adjudication to the Labour Court at Mangalore.

Points of Dispute

I. Is the Management justified in awarding the punishment of stoppage of one increment from 1st April 1978 to Sri H. C. Raju ?

II. If not, to what relief the said workman is entitled."?

By Order and in the name of the Governor of Karnataka,

H. V. SOMASEKHARAIAH,
Under Secretary to Government,
Social Welfare and Labour Department.

1225—S.O. 1532

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute : Industrial dispute between the workmen and the management of M/s. Sita Bhateja's Nursing Home, No 8 & 9, O'Shanghnessy Road, Longford Gardens, Bangalore-25.

Award of the Presiding Officer, Additional Labour Court, Bangalore published.

Read the following papers :—

(1) Letter No. 193/79-80 dated 24th April 1979 from Sri N. P. Kempe Gowda, Presiding Officer, Additional Labour Court, Bangalore-25..

BEFORE THE PRESIDING OFFICER, ADDITIONAL LABOUR COURT, BANGALORE

Dated 18th day of April 1979

PRESENT

Shri N. P. Kempe Gowda, B.A., B.L.

Presiding Officer,

Reference No. 24 of 1978

I Party :—

Smt. Kannamma, C/o Raghu, No. 473, Anandapuram, H.A.L. Bangalore-17.

Vs

II Party :—

The management of M/s. Sita Bhateja's Nursing Home, No. 8 & 9, O'Shanghnessy Road, Langford Gardens, Bangalore-25.

Appearances :—

Sri B. Mathew, Advocate for the first party.

Sri C. S. Prasannakumar, Advocate and Sri B. Vedantaiengar Advocate, for the Second Party.

AWARD

1. By their order No. SWL 270 LLD 78 dated 25th April 1978, the Government of Karnataka referred a dispute between the parties involving the following points for adjudication to this Court under Section 10 (1) (c) of the Industrial Disputes Act, as in their opinion, the dispute is an industrial dispute and is required to be decided by the Labour Court.

" I. Are the management of Sita Bhateja's Nursing Home, No. 8 & 9, O' Shaughnessy Road, Longford Gardens, Bangalore-25, justified in terminating the services of Smt. Kannamma with effect from 15th October 1977 ?

II. If not, to what relief the workwoman is entitled ?"

2. In this court the parties filled their respective written statements and led evidence after the issues were framed. Arguments addressed were heard.

3. The case for the first party is, briefly. this ;

The first party had been employed as Ayah in the second party Nursing home and she was rendering sincere and faithful service for 13 years. On 10th October 1977 a show cause notice was issued to her alleging misconduct of having demanded tips from a patient and required her to file her reply within 2 1/2 days, but on 15th October 1977 the second party terminated her services without holding any enquiry. On 1st November 1977 she requested for reinstatement and they sent a reply on 7th December 1977 refusing to consider her request. They had also obtained her signatures to some documents, the contents of which were not known to her as she is illeterate. On her petitioning the Labour Officer, the latter held conciliation proceedings, but to no avail. Therefore, on his report to the Government, this reference is made. The termination of the services of the first party is made without complying with the procedure and requirements natural justice and the punishment imposed against her is excessive and disproportionate to the gravity of the alleged affairs. The dismissal is illegal. She was drawing a total emoluments of Rs 159 per month and is unemployed ever since her dismissal. Therefore she is entitled to reinstatement full back wages, continuity of service and other consequential benefits.

4. The second party admitted that the first party had been employed in their Nursing Home as Ayah whose duty was to cleanse the Bath room, floor, furniture etc. and also providing amenities like supplying bed-pans to the patients. Further, it is their case that she was not in their service for 15 or 13 years, as in fact, their Nursing Home did not exist 13 years ago, but, she was in service from the end of November 1976. It is their case that Ayahs working in their Nursing Home were reported demanding illegal tips from the patients or their relatives and though they had issued a circular in May 1977 warning them not to resort to such practice, there was a complaint against the first party on 10th October 1977 from one Sri Nichalchand Jeevaraji, the husband of an in-patient regarding her having demanded tips. It is further their case that on such complaint a show cause notice issued to the first party and she filed the reply admitting her mis-behaviour, but putting forth several reasons which were irrelevant. It is their further contention that an enquiry

was conducted and the Enquiry Officer reported recommending the the termination of her services, and accordingly, in order to maintain the reputation of the second party, and to get red of such practice, the second party in good faith and not in pursuance of any unfair labour practice, terminated the services of the first party. They have maintained that there has been no violation of the principles of natural justice and the enquiry held as also the punishment inflicted are fair and reasonable. It is also their contention that their's is not an 'industry' and this court has no jurisdiction to adjudicate on the dispute and in any case, it cannot sit in appeal against the finding of the domestic enquiry tribunal. Therefore, according to them, the Reference is liable to be dismissed.

5. The issues framed in the case are :

1. Whether the II Party is an Industry ?
2. Whether the II Party is justified in terminating the services of the I party-workwoman.
3. If not, to what relief the workwoman is entitled to ?
4. What Order ?

On the basis of the material placed on record, I shall now proceed to record my findings on these issues as also my reasons therefor.

6. *Issue No. 1* :—At the time of arguments, it was fairly conceded by the learned Advocate appearing for the second party that their contention that they are not an 'industry' is not tenable in view of the law as interpreted by the Supreme Court. In the case of Safdarjung Hospital Vs. Kuldip Singh Sefhi, AIR 1970 SC 1407. The Supreme Court has laid down that Hospitals, Nursing Homes and Dispensaries are 'industry' as they are run as business. Therefore, it is clear that the second party is an 'industry'. Hence, the first issue is answered in the affirmative.

7. *Issue No. 2* :—The termination of the services of the first party by the second party is according to the latter due to her misconduct for having demanded tips from the relative of a patient lodged in their Nursing Home. Though they pleaded in their counter-statement that at the domestic enquiry held, her guilt has been established at the time of evidence and arguments, no attempt was made to prove that a proper and fair enquiry was held against the first party for her alleged misconduct. The enquiry Officer is stated to be one Dro Rita has not been examined and no record of proceeding of such enquiry is also made available except Ex. M-6 which is an 'adverse report' said to have been given by the Enquiry Officer. There is no mention even in this document that any witnesses were examined at the enquiry and any opportunity was given to the first party to produce her evidence. We have only the statement of the Enquiry Officer that she conducted an Enquiry and the patients attended and gave a statement in writing which has been sent to the Office. So, the alleged enquiry is only the obtaining of

the written complaint of the patients attended which accordingly to MW-1, Bhateja, the General Manager of the second party is the basis for the action taken against the brst party. It is not his statement that during enquiry the complaint of the relative of the patient which is produced at Ex. M-3 was given before the Enquiry Officer. Further, in Ex. M-6, there is no finding recorded by the Enquiry Officer, therefore it cannot be said that a proper or fair domestic enquiry had been held against the first party workman and she was found guilty at that enquiry, of the misconduct alleged against her. Hence, I hold that there was no fair domestic enquiry held against the first party by the second party. Evidently, for this reason, the second party took upon itself the burden of proving the guilt of the first party workwoman in this court.

8. That leads me to the question as to whether the misconduct imputed to the first party workwoman is proved or admitted. The material on record would not warrant a reasonable conclusion that the misconduct imputed is proved by any legal evidence. The second party had to prove that the first party workwoman demanded tips from Sri Nichalchand Jeevaraj the husband of a patient lodged in their Nursing Home. The best person to speak to such demand was the said Nichalchand Jeevaraj himself. He has not been examined. He is stated to be now staying in Rajasthan. The second party has secured and produced an affidavit said to be is that of Nichalchand Jeevaraj to prove his version. But, in my view, that affidavit cannot be treated as legal evidence in the case as the first party was not afforded an opportunity to cross-examine that witness. The court also did not permit or require production of the evidence of that witness in the form of affidavit. Therefore, that affidavit cannot be taken as evidence of the witness to the fact that the first party demanded of him tips.

9. MW-1, the General Manager spoke of the said Nichalchand having given a written complaint Ex. M-3 This document is not in the language of the court or in English. No translation of that document is filed. Further, there is no proof of the contents of that document and Nichalchand Jeevraj having signed. It is on the letter head of one Dr. (Mrs.) Sita Bhateja, one cannot believe MW-1 in his statement that it was given to him. On the other hand, we have the mention made in Ex. M-6 that it was given to the Enquiry Officer and she sent to the Office, that enquiry Officer is not examined to say that Nichalchand Jeevraj wrote, and signed, Ex. M-3 in her presence. Therefore, I hold that Ex. M-3 is not proved. So, even the fact of Nichalchand Jeevraj having given Ex. M-3 is not established No other evidence is also made available in proof of the first party demanding tips from the said Nichalchand Jeevraj or from any other person. MW-1 spoke of earlier complaint against the first party workwoman about her conduct demanding tips, but there is

no record for it and even in the show cause notice Ex. W-1, there is no mention about it. Under these circumstances, I cannot, but hold that the misconduct imputed against the first party workwoman is not proved. However, in my view, there is an admission by the first party of her conduct demanding tips in her reply statement Ex. M-5 given to the second party, of course, in the course of her evidence she denied having known the contents of Ex. M-5 But she admitted that she has signed this document at Ex. M-5A. We have the sworn statement of MW-1 that the first party workwoman herself handed over the reply Ex. M-5. According to him, she herself had got that reply written from some one and gave it. But the first party as WW-1. stated that MW-1 asked her to sign Ex. M-5 saying that he would give her work. We have to see which of these versions is believable.

10. In my view the version that the first party workwoman gave Ex. M-5 in reply to the show cause notice is more probable than the version that her signature was taken by MW-1 to Ex. M-5 mi representation. Admittedly the show cause notice as per Ex. W-1 had been received it by the first party on 10th October 1977, that is also evidenced by the fact that she in token of having received on that day, signed the copy of that notice Ex. M-4 and M-4 (a). She has pleaded in her claim statement that she was required to give her reply to the notice in Two and half days. No where has she stated that she did not give any such reply. It is also not her statement that she had given a reply, but Ex. W-5 is not the same. Even in the subsequent termination of service notice Ex. W-2 she has herself produced a reference is made to her reply dated 13th October 1977 to the show cause notice. In her subsequent letter dated 1st November 1977 written to the second party, she has not denied that she gave any reply referred to in Ex. W-2. Ex. W-3 is her letter dated 1st November 1977. In her claim statement also, she has not denied that she has sent any reply to the show cause notice. Under these circumstances, it is very likely that she had given the reply Ex. W-5 as in fact, she had been asked to give such reply in with in 2½ days after service of Ex. W-1.

11. Moreover, her statement that her signature to Ex. M-5 was taken assuring that she would be given work, is on the face of it absurd, as in fact, she had not been dismissed on the date when it was given. If, on the other hand, it is to be presumed that she was asked to sign Ex. W-5 after her services were terminated, I do not think that she would have, thus willingly signed that document, especially when she took recourse to law to raise an industrial dispute. Under these circumstances, I am of the view that Ex. W-5 is the reply given by the first party after getting it written.

12. In Ex. M-5, given by the first party as reply, she has admitted that she had been misbehaved by asking tips. At the same

time she had stated about her indignant circumstances, about her long and faithful service and praying for excuse for that one lapse. Therefore, in my opinion, the first party admitted the misbehaviour imputed to her, in Ex. M-5. On that admission itself it may be held that she was guilty of misconduct though actually there is no proof of such misconduct available. Therefore, I hold that the first party was guilty of misconduct of asking for tips while serving as Ahaya under the second party.

13. That brings me to the question as to whether the dismissal of the first party workwoman by the second party for the admitted misconduct is justifiable. As I have already pointed out, the misconduct she has admitted is of having demanded tips of Rs. 2/ or Rs. 3/ from the relative of a patient as alleged in the show cause notice given to her. She had not been even paid any tips. As I have already pointed out, there is no acceptable evidence in proof of she having been in the habit of asking tips from the patients or relatives of patients though MW-1 would have us believe that she was doing so. His statement is unworthy of acceptance since there is no such allegation even in the show cause notice Ex. W-1. There is also not proof of the fact that the first party workwomen refused to perform any duty she was to perform as Ayah unless she was tipped. It is also significant to note that even in the show cause notice, it is not alleged that she asked for tips to do any work Under the circumstances, the mere circumstance of this indigent employee having asked a tip of Rs. 2/ from the relative of a patient on one occasion cannot by any standards be considered as such a grave misconduct which would call for the severest punishment of dismissal from service. In my view, the punishment awarded to her is wholly unjustifiable having regard to the triviality of the misconduct she had admitted and also to the fact that she repented for the same and assured that she would not do it again. No doubt, the second party had issued a circular as per Ex. M-2 to all the Ayahas and Aids working in their Nursing Home warning them against asking the patients for tips like beggers. The word 'beggers' is used. It indicates that they were just begging for money, but were not demanding money to do their duties. The first party workman has admitted that such a warning was issued and she too had signed it at Ex. M-2 (a), That was in May 1977. The wrath of MW-1 is that inspite of such a circular, the first party had demanded tips. It may be that there was such a lapse on her part, but in my view, that would not call for the extreme penalty imposed her.

14. This court has ample power under Section 11A of the Industrial Disputes Act to consider the question whether the order of dismissal for misconduct, is justified even if such misconduct is held to have been proved, for this proposition, the decition of the Supreme Court in workmen of Fire Stone Tittle and Rubber Company of India